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AS

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/247,418 02/10/99 EGGERS

H MO-5041/WW-5

IM22/0703

BAYER CORPORATION
PATENT DEPARTMENT
100 BAYER ROAD
PITTSBURGH PA 15205-9741

EXAMINER

KRUER, K

ART UNIT	PAPER NUMBER
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1773

10

DATE MAILED: 07/03/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/247,418

Applicant(s)

Eggers et al.

Examiner

Kevin Krueer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on May 24, 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-10 and 12-31 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-10 and 12-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☒ All b) ☐ Some* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) ☐ Other: _____

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 2-10 and 12-31 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "of the weight per area of said (I)" is indefinite. It is not clear from the specification (page 11, lines 23-28) how to calculate said ratio. The examiner thanks Applicant for the example of how to calculate "weight per unit area" in paper #8. However, it is not clear from the specification that the proposed calculation method in Paper #8 is the method by which the weight per unit area was determined. *In arguendo* the proposed calculation method is accepted, the example fails to render the term definite. Specifically, it is unclear how Applicant's claimed percent based upon "weight per unit area" measurement differs from the more traditional weight percent. The examiner is left to conclude that Applicant intends for there to be a difference since Applicant intentionally claimed a percent based upon weight per unit area rather than weight percent. The only difference the examiner can find between the two measurements is that the plane (a.k.a. area) claimed by Applicant can vary (a.k.a. it can be the XY plane, YZ plane, XZ plane or some other randomly defined plane in three dimensional space).

The percent will vary depending on the plane in which the measurement is calculated. For example, in applicant's example, the weight per area is calculated in the 1cm x 1cm direction (for the sake of argument, the examiner will call this the X, Y plane). Each layer has dimensions of

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1 cm X 1cm in the X, Y plane. However, what if the measurement was taken in the X, Z plane?

Then, the following would be true:

$$3.24 \times 10^{-3} \text{ g} / (1\text{cm} \times 35 \times 10^{-6}\text{m}) = 0.92\text{g/cm}^2$$

$$1.39 \times 10^{-3}\text{g} / (1\text{cm} \times 15 \times 10^{-6}\text{m}) = 0.093 \text{ g/cm}^2$$

$$0.92/.185=50\%$$

etc.

Applicant indicates (Paper #8, page 9) that the weight per unit areas of all the layers comprising the laminate (not just the weight per unit areas of the inner and outer plies) are added to calculate the "weight per area of said (I)."

Claim Rejections - 35 USC § 103

1. Claims 31, 2, 3, 6-10, 13, 15, 17, 18, 19, 20, 23, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dobreski et al. (US 5,334,428) for reasons of record.
2. Claims 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dobreski et al. (US 5,334,428), as applied to claims 31, 2, 3, 6-10, 13, 15, 17, 18, 19, 20, 23, and 25 above, and further in view of Simmons (US 5,273,809) for reasons of record.
3. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dobreski et al. (US 5,334,428), as applied to claims 31, 2, 3, 6-10, 13, 15, 17, 18, 19, 20, 23, and 25 above for reasons of record.
4. Claims 31, 2-10, 12, 13, 14, 17, 18, 19, 23, 25, 26, 27, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paleari et al. (US 6,110,570) in view of Hodgson, Jr (US 5,206,075) for reasons of record.

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5. Claims 31, 2-1 ~~D~~ 13, 15, 17-21, 23, 25-28, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chum et al. (US 5,089,321) for reasons of record.

6. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chum et al. (US 5,089,321), as applied to claims 31, 2-1 ~~D~~ 13, 15, 17-21, 23, 25-28, and 30 above, for reasons of record.

Response to Arguments

7. Applicant's arguments filed May 24, 2001 have been fully considered but they are not persuasive. Specifically, Applicant argues that the primary references do not teach a film wherein the inner ply of the multi-ply laminate has a melt flow rate that is greater than the melt flow rate of the outer ply. While the examiner acknowledges that the melt index of the intermediate/core layer of the primary references is less than the melt index of the outer layer, the examiner noted on page 2 ("claim objections") of paper #7 that the terms "inner" and "outer" would be interpreted to read on any laminate wherein one layer has a lower melt index than another layer. Thus, Applicant's arguments are not persuasive.

With respect to Dobreski in view of Simmons, Applicant argues that impermissible hindsight is relied upon to combine the non-cling layer of Simmons with the film taught by Dobreski. The examiner respectfully disagrees. Simmons teaches a stretch wrap film that may comprise a non-cling layer (col 8, line 53). Simmons does not teach materials suitable for such a film. However, Dobreski teaches that propylene, polyester, and polyamide may be used as non-cling films in stretch wrap films. Furthermore, the courts have held that the selection of a known material based on its suitability for its intended use supports a prima facie case of obvious. Thus,

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the examiner maintains the position that it would have been obvious to utilize the non-cling compositions taught in Simmons as the non-cling layer taught in Dobreski because Simmons teaches such compositions are suitable as non-cling films in stretch wrap films.

Applicant further argues that the combination of Hodgson and Paleari relies upon picking, choosing, and recombining various elements of the references. The examiner disagrees with Applicant's conclusions. Paleari teaches that the heat seal compositions taught in Hodgson are preferred. Furthermore, the melt indexes relied upon are taught in the rejection are the preferred embodiments. The examiner does not find the construction of the prior art's preferred embodiment to be an unfair "picking, choosing, and recombining" of the prior arts' teachings to reconstruct the claimed invention. Thus, applicant's arguments are not persuasive.

With respect to the rejection of claim 12 under Paleari in view of Hodgson, the examiner meant to reference Example 19, not Example 1. Specifically, layers a) and b) read on Applicant's 2-ply inner layer, and layer d) reads on Applicant's outer layer.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

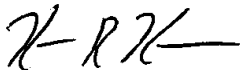
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin R. Kruer whose telephone number is (703) 305-0025. The examiner can normally be reached on Monday-Friday from 7:00 a.m. to 4:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine Copenheaver, can be reached on (703) 308-1261. The fax phone number for the organization where this application or proceeding is assigned is (703)305-5436. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0651.

Kevin R. Kruer
Patent Examiner



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